

# LEGAL ANALYSIS OF THE TURKSTREAM GAS PIPELINE PROJECT

*Türkakımı Projesinin Hukuki İncelemesi*

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## **Abstract**

Gas pipeline projects are still significant projects as natural gas is increasingly used in electricity generation and LNG is not still cheaper option for most of the countries. Even though pipeline projects are being constructed widely all over the world, there is not parallel advancement in international pipeline legal regime. Turkstream, as one of the latest pipeline projects, clearly shows this lack of unified legal regime whereby the legal regime of Turkstream consists of the intergovernmental agreement (IGA) between Turkey and Russia, host government agreements and some provisions of other international treaties. Considering possible the lack of consistency between legal regimes of different projects, Energy Charter Secreteriat has prepared the model intergovernmental agreement in order to ensure consistency between different IGA's. In line with this model agreement, in this paper, some prominent institution reports, books and journal articles are used for analysing the legal framework of Turkstream and afterward its consistency with the model agreement is examined in order to assess its strengths and shortcomings. It is found that the legal regime of the Turkstream project is sound and mostly consistent with the model agreement, but lack of some provisions could also bring some problems during the implementation of the project.

**Keywords:** Transboundary Pipelines, Turkstream, IGA, Energy Charter Treaty, UNCLOS

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## Öz

Elektrik üretiminde doğalgazın kullanımının artması ve LNG'nin birçok ülke bakımından henüz ucuz bir seçenek olmamasından dolayı gaz boru hattı projeleri önemini korumaya devam etmektedir. Her ne kadar boru hattı projeleri dünya genelinde yaygın bir biçimde yapılmaya ve uygulanmaya devam etse de, uluslararası boru hattı yasal rejimi konusunda buna mukabil bir gelişme görülmemektedir. En yeni boru hattı projelerinden biri olan ve yasal altyapısı Türkiye ve Rusya arasındaki hükümetler arası anlaşma, ev sahibi hükümet anlaşması ve diğer uluslararası anlaşmaların bazı hükümlerinden oluşan Türkakımı projesi de bu anlamda yekpare bir yasal rejim eksikliğini en açık biçimde göstermektedir. Her bir projenin kendine ait bir yasal rejiminin olmasından kaynaklı farklılık ve tutarsızlıkların önüne geçmek amacıyla Enerji Şartı Sekreterliği örnek hükümetler arası anlaşma hazırlamıştır. Bu makalede, işbu örnek anlaşma metni esas olmak üzere çeşitli organizasyon raporları, kitaplar ve dergi makaleleri incelenerek Türkakımı projesi, eksik ve güçlü yönlerini tespit edebilmek amacıyla hukuki açıdan ele alınmıştır. Tüm bu araştırmaların sonucunda Türkakımı projesinin hukuksal olarak sağlam ve örnek anlaşma ile çoğunlukla örtüşmekte olduğu; ancak bazı hükümlerin eksikliğinin projenin gelecekte uygulanması aşamasında birtakım sorunlara yol açabileceği tespit edilmiştir.

**Anahtar Kelimeler:** Sınırötesi Boru Hatları, Türkakımı, Hükümetler Arası Anlaşma, Enerji Şartı Sekreterliği, UNCLOS

## 1. INTRODUCTION

Transboundary gas pipelines are important subjects of international energy law and it is seen that pipelines will keep their importance as natural gas is increasingly becoming more important energy source and liquefied natural gas (LNG) transport is still not economically feasible option for many parts of the world.<sup>1</sup> However, there is not parallel advancement with regards to international pipeline legal regime which would regulate those pipelines,<sup>2</sup> to the contrary, all pipeline projects now have their own legal framework which consists of, inter alia, intergovernmental agreements (referred hereafter as IGA), multilateral treaties, regional treaties and host government agreements

<sup>1</sup> STEVENS Paul, "Cross-Border Oil and Gas Pipelines: Problems and Prospects", **OGEL**, vol.4, 2006, ([www.ogel.org/article.asp?key=2292](http://www.ogel.org/article.asp?key=2292)), accessed 25.03.2020.

<sup>2</sup> VINOGRADOV Sergei, "Challenges of Nord Stream: Streamlining International Legal Frameworks and Regimes for Submarine Pipelines", **German YB Int'l L**, vol.52, 2009, pages. 241-292, p.245.

between governments and private companies.<sup>3</sup> This inconsistent and complex legal regime appear as an unattractive situation for both lenders and investors<sup>4</sup> given transboundary pipelines require huge capital investment at the outset.<sup>5</sup> Against this background, although concluding of any international pipeline legal regime has not been achieved yet, the model intergovernmental agreement regarding with transboundary pipeline projects has been concluded under the auspices of Energy Charter Secretariat in order to ensure consistency between different transboundary pipeline project's legal frameworks.<sup>6</sup> Thanks to this model intergovernmental agreement, some IGA's regarding with specific pipeline projects which are in line with this model agreement have been adopted to date,<sup>7</sup> but as the model agreement is not full endorsed yet all over the world, there still remains some inconsistencies between different IGA's regarding with their legal regime which thus could make transboundary projects hard to implement.

Among transboundary gas pipeline projects, one of the recent one is the Turkstream project, which is implemented according to the IGA between Russia and Turkey.<sup>8</sup> As the project have both offshore and onshore parts, application of various international treaties which include some provisions regarding with transboundary pipelines and energy transit, such as United Nations Convention on the Law of the Sea (UNCLOS), Energy Charter Treaty (ECT) and Espoo Convention comes to stage. As the successful implementation of one project is strictly related with the soundness of its legal base, comparing the legal base of any project to the model agreement which is designed to ensure consistency between different intergovernmental

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<sup>3</sup> DULANEY Michael/ MERRICK Robert, "Legal Issues in Cross-Border Oil and Gas Pipelines", **J Energy & Nat Resources L**, vol. 23, 2005, pages. 247- 265, p.247.

<sup>4</sup> DOW Stephen/ SIDDIKY Ishrak Ahmed/ AHMMAD Yadgar Kamal, "Cross-border oil and gas pipelines and cross-border waterways: a comparison between the two legal regimes", **The Journal of World Energy Law & Business**, vol.6, 2013, pages. 107-128, p. 113.

<sup>5</sup> LEAL-ARCAS Rafael, **Energy Transit Activities: Collection of Intergovernmental Agreements on Oil and Gas Transit Pipelines and Commentary**, Energy Charter Secretariat, 583 pages, 2015, p.8.

<sup>6</sup> Energy Charter Secretariat, **Model Intergovernmental and Host Government Agreements for Cross-Border Pipeline**, Second Edition, ECT, 2008.

<sup>7</sup> LEAL-ARCAS Rafael/ GRASSO Costantino/ RIOS Juan Alemany, **Energy Security, Trade and the EU: Regional and International Perspectives**, Edward Elgar, 488 pages, 2016, p.188

<sup>8</sup> Agreement concerning TurkStream Gas Pipeline between the Government of the Republic of Turkey and the Government of the Russian Federation, Official Gazzette of Republic of Turkey, 24.11.2016, (<https://www.resmigazete.gov.tr/eskiler/2016/12/20161224-1.pdf>), accessed 25.03.2020.

agreements may be helpful for understanding the strengths and inadequacies of the project's legal base.

In the next part, the Turkstream as a long-distance transboundary gas pipeline project is legally analysed. Throughout this analysis, in order to determine the legal framework of the project, UNCLOS, ECT and other international treaties are analyzed in terms of their applicability to the project. In the course of this research, commentaries of scholars and some related reports are also reviewed in order to gain different perspectives. After having examined the legal framework of the project, the IGA of the Turkstream project is compared with the model IGA in detail for getting clear understanding as to whether the legal ground of the project is consistent with the model agreement and if not, what are the inconsistencies and accordingly which challenges may the project face in the future. It could be said at the outset that the Turkstream project has robust legal ground, which consists mainly of IGA provisions and some UNCLOS provisions are also applicable in terms of being customary law. Besides, transit provisions of ECT also will be applicable for the second part of the project which is designed to transport Russian gas into Europe. The IGA of the project is also seen mostly consistent with the model agreement which therefore could help to overcome possible challenges in the future.

## 1.1. TURKSTREAM PROJECT

### 1.2. Background

Turkstream Project was planned after the cancellation of the South Stream Project which had been designed to export Russian gas into Europe via Bulgaria. At the outset, IGA's between Russia and respective European states had been concluded but after strong pressure coming from European Union (EU), respective states did not back those IGA's. After that, South Stream Project had to be cancelled.<sup>9</sup>

The main reason behind that cancellation was the strict EU transit rules.<sup>10</sup> Even though the EU rules –especially Third Energy Package (TEP)- were designed to improve liberalization progress and ensure energy supply security

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<sup>9</sup> STERN Jonathan/ PIRANI Simon/ YAFIMAVA Katja, “Does the cancellation of South Stream signal a fundamental reorientation of Russian gas export policy?”, **The Oxford Institute For Energy Studies**, 2015, p.4, (<https://www.oxfordenergy.org/wpcms/wp-content/uploads/2015/01/Does-cancellation-of-South-Stream-signal-a-fundamental-reorientation-of-Russian-gas-export-policy-GPC-5.pdf?v=79cba1185463>), accessed 25.03.2020.

<sup>10</sup> ROBERTS John, **The Impact of Turkish Stream on European Energy Security and the Southern Gas Corridor**, Atlantic Council, 2015, p.16.

of member countries as a whole, they did not take into account of the requirements of capital-intensive pipeline projects given that they require long term fixed commitments.<sup>11</sup>

After the cancellation, Russia and Turkey agreed to proceed the uncompleted project and then they concluded the IGA in 2016. In line with this IGA, Turkey was designed in place of Bulgaria as a country where the onshore part of pipeline is to start. In the project, there are two parallel pipelines both have onshore and offshore parts. Whereas the first one is built by Russia for Turkish domestic market and onshore part of this first pipeline is built by Turkey, the second line is designed for the need of some European countries, its offshore part is built by Russia and the onshore part is built by cooperation of Turkey and Russia.<sup>12</sup> By replacing Bulgaria with Turkey, Russia aimed at not to face with those EU rules in Turkey as it does not member of EU and its local law does not oblige EU requirements.

Even though the first part of the project has been launched,<sup>13</sup> the future of the second part is still not clear as the EU rules regarding with pipelines will still be in place.<sup>14</sup> EU rules strictly forbid bundled structures in which gas ownership and pipeline ownership are possessed by same entity. Secondly, pipelines in EU jurisdiction have to give access to third parties.<sup>15</sup> If the pipeline owners do not want to give access to third parties, then they have to obtain consent from the EU commission for being able to allocate the full capacity of the pipeline for themselves,<sup>16</sup> but given the EU's stance against Turkstream project,<sup>17</sup> taking a consent for the Turkstream does not seem possible. As a result, while the offshore part of Turkstream has been

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<sup>11</sup> LEAL-ARCAS Rafael/ PEYKOVA Maria/ CHOUDHURY Tathagata and others, "Energy Transit: Intergovernmental Agreements on Oil and Gas Transit Pipelines", **Renewable Energy L & Pol'y Rev**, vol.6, 2, 2015, pages. 122-162, p.123.

<sup>12</sup> TurkStream Gas Pipeline Agreement, Art.4-5.

<sup>13</sup> Gazprom Information Directorate, "TurkStream gas pipeline officially launched in grand ceremony", 8.01.2020, (<https://www.gazprom.com/press/news/2020/january/article497324/>), accessed 25.03.2020.

<sup>14</sup> GURBANOV Ilgar, "Perspective for Turkish Stream Project: Possible Scenarios and Challenges", **Caucasus International**, vol. 6, 2, 2016, pages. 75-95, p.79.

<sup>15</sup> KONOPLYANIK Andrey, "Gas Transit in Eurasia: Transit Issues between Russia and the European Union and the Role of the Energy Charter", **Journal of Energy & Natural Resources Law**, vol. 27, 3, 2009, pages. 445-486, p.460.

<sup>16</sup> ROBERTS, p.16.

<sup>17</sup> ZUVELA Maja, "Serbia to start building TurkStream pipeline stretch in March or April" **Reuters**, 7.02.2019, (<https://www.reuters.com/article/serbia-gas/serbia-to-start-building-turkstream-pipeline-stretch-in-march-or-april-idUSL5N2027BQ>), accessed 25.03.2020.

completed, the future of second string depends on EU and other Balkan state's stance towards the project.

State's motivations also vary in the Turkstream project. For Turkey, the main reason is to ensure the security of Russian gas supply which before was flowing through Western Line rather than increasing its gas import<sup>18</sup> and also its long-desired target of being gas trade hub with the launching of the second string of the project which is intended for EU supply. For Russia, by having the Turkstream as an alternative route for exporting its gas to Europe, it will be more independent from Ukraine pipelines for gas transit which caused so much disputes in the past. In addition, with increasing its gas supply to Europe, Russia could protect its primary gas supplier role given the threats from other new coming pipelines of Caucasus and increasing LNG export of United States of America (USA).

With regards to the future of the project, it will mainly depend on bilateral relationship between Russia and Turkey and its legal framework because the most important requirements of successful pipeline projects are to have strong relationship between respective countries where pipeline is located and their dependency to each other.<sup>19</sup> The Turkstream, at this context, beyond having sound legal framework which is consisted with the model agreement, is located on the countries, Russia and Turkey, which have strong relationship both economically and politically. Moreover, the fact that Turkey is not only transit country but also gas importing country in the project, this significantly reduces the implementation risks of the project as Turkey is also dependant to gas flowing from Russia.

### 1.3. Legal Framework

Cross border pipelines, from the legal perspective, can be separated into two groups. For the first group, legal regime of these pipelines changes according to where pipeline is located and therefore different parts of the pipeline are assessed as a separate unit, on the other hand, in the second group pipelines, legal regime does not change and thus all parts of the pipeline are assessed as single unit which is called 'integrated pipeline model'.<sup>20</sup> In comparison to first group pipelines, integrated pipeline model is more

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<sup>18</sup> METE Gokce, "TurkStream Pipeline Project: An Analysis of Legal, Financial and Technical Aspects", **European Centre for Energy and Resource Security 'Reflections' Working Paper Series**, vol.3, 2017, pages. 36-46, p.39.

<sup>19</sup> DOW and others, p.107.

<sup>20</sup> DULANEY/ MERRICK, p.247-248.

advantageous in terms of being more consistent legally.<sup>21</sup> Turkstream gas pipeline, within this classification, is the example of integrated pipeline model, therefore same legal regime is applied to all parts of Turkstream regardless of where it is located.

Even though same legal regime is applied to all parts of the Turkstream, legal framework of the project is quite complex and consists of the IGA and different international and bilateral contracts because there is not single international legal framework governs all cross-border pipeline projects. On the contrary, there are so many international treaties which include different provisions regarding with transboundary pipelines and energy transit.<sup>22</sup> For example, while UNCLOS has provisions mostly concerning submarine pipelines and who has right to lay these pipelines,<sup>23</sup> ECT generally deals with energy transit issue.<sup>24</sup> Therefore, when determining the legal base of the Turkstream project, these international treaties also have to be assessed in terms of their applicability to the project.

Although IGA's are one of the most important pillars of the legal framework of the pipeline projects, they are not prerequisite for projects. For example, the Nord Stream project is merely governed by private agreements because intergovernmental agreements only become necessary where other international legal instruments such as customs or multilateral treaties lack as in the case of Turkstream Project.<sup>25</sup> Given that Turkey is not party to UNCLOS and Russia is not party to ECT and also no longer bound by its provisional application after 2009, the IGA in respect of the Turkstream appears as only and the most important international legal document that could govern project.<sup>26</sup>

Other main legal instruments in addition to the IGA are Host Government Agreements (HGA) between Turkey and Russian companies, United Nations Convention on the Law of the Sea (UNCLOS) in terms of some of its customary rules, and Energy Charter Treaty with regards to its energy transit provisions.

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<sup>21</sup> JAMAL Fazil, "Legal Aspects of Transnational Energy Pipelines: A Critical Appraisal", **Eur Networks L & Reg Q**, vol. 3, 2, 2015, pages. 103-116, p.109.

<sup>22</sup> DAMAGH Mehdi Piri/ FAURE Michael, "The Effectiveness of Cross-Border Pipeline Safety and Environmental Regulations (under International Law)", **NCJ Int'l L & ComReg**, vol. 40, 2014, pages. 55-134, p.85.

<sup>23</sup> LEAL-ARCAS and others, 2015, p. 124.

<sup>24</sup> *ibid.*

<sup>25</sup> AZARIA Danae, "Transit of Energy via Pipelines in International Law", **Proceedings of the ASIL Annual Meeting**, vol. 110, 2016, pages. 131-139, p. 139.

<sup>26</sup> METE, p. 37.

UNCLOS has some provisions with regards to cross border submarine pipelines which are related with the Turkstream project. In essence, it is more preferred to lay submarine pipelines instead of laying onshore pipelines because the legal regime of UNCLOS gives states right to lay pipelines on the continental shelf of other states.<sup>27</sup> According to this right, Russia has laid submarine pipelines on the continental shelf of Turkey. But if the route of laying on-land pipelines were preferred, Russia would have to deal with sovereign rights of Turkey.<sup>28</sup> At this point, even though the applicability of UNCLOS to the Turkstream is not precise due to Turkey is not a party to UNCLOS, some UNCLOS provisions will still be applicable in terms of being customary law as Turkey declared its Exclusive Economic Zone (EEZ) in Black Sea.<sup>29</sup>

Regarding with transit issues, ECT is one of the most important treaty as it has specific rules on energy transit in particular for energy transit through pipelines. Article 7 of the Treaty is devoted to energy transit issue and reiterates the freedom of transit. ECT Article 7 requires contracting parties to take the necessary measures to facilitate transit and permit the construction of transit pipelines through their territory.<sup>30</sup> It also requires parties not to interrupt existing transit flows in the event of a dispute over any matter arising from transit.<sup>31</sup> While rules about the freedom of transit were similar to rules in other conventions,<sup>32</sup> forbidding the interruption of transit flow during dispute is completely unprecedented provision.<sup>33</sup> Even though Russia is no longer party and provisional application is no longer possible, Turkey is still a party to ECT. Accordingly, the applicability of ECT comes into place for the second string of the Turkstream which is built for Europe. In this case, Turkey as the

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<sup>27</sup> LANGLET David, "Transboundary Transit Pipelines: Reflections on the Balancing of Rights and Interests in Light of the Nord Stream Project", **The International and Comparative Law Quarterly**, vol. 63, 4, 2014, pages. 977-995, p.981

<sup>28</sup> VINOGRADOV, p. 244.

<sup>29</sup> METE, p. 45.

<sup>30</sup> Energy Charter Treaty (entered into force 16 April 1998) ([https://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/itre/dv/energy\\_charter\\_/energy\\_charter\\_en.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/documents/itre/dv/energy_charter_/energy_charter_en.pdf)), accessed 25.03.2020.

<sup>31</sup> Energy Charter Treaty, Art.7(6)

<sup>32</sup> WALDE Thomas (ed), **The Energy Charter Treaty, An East-West Gateway For Investment An: An East-West Gateway for Investment and Trade**, International Energy & Resources Law and Policy Series, Kluwer Law International, 1996, p. 508.

<sup>33</sup> AZARIA Danae, "Energy Transit under the Energy Charter Treaty and the General Agreement on Tariffs and Trade", **Journal of Energy & Natural Resources Law**, vol. 27:4, 2009, pages. 559-596, p.582



party to the ECT will be transit country between Russia and destination country. The fact that the Russia is no longer a party to ECT does not change the situation of the applicability of ECT provisions to Turkey because it is enough for applicability of ECT provisions that transit party and either destination or origin party are parties to ECT.<sup>34</sup>

ECT, beside having important transit provisions, does not include mandatory third-party access to pipelines<sup>35</sup> which is one of the main pillars of the EU Third Energy Package.<sup>36</sup> While in Draft Transit Protocol to ECT, ‘available capacity’ which would give some sort of access right to some part of pipeline capacity, was defined,<sup>37</sup> this draft did not become a part of ECT.<sup>38</sup> Regarding third party access, it will not be applied according to the Turkstream IGA. Therefore, in the Turkstream Project, all capacity will be dedicated to the owners of the pipeline.<sup>39</sup>

As to the environmental principles on pipeline projects, most important provisions could be found in Espoo Convention as it provides the requirement of environmental impact assessment (EIA) process.<sup>40</sup> According to this convention, state party hosts a project which could have adverse environmental transboundary impact has to conduct environmental impact assessment.<sup>41</sup> With Rio Declaration, even though its non binding nature, it could be asserted that making EIA could be part of customary law.<sup>42</sup> Even though Turkey is not party to Espoo Convention, it has regulated almost same EIA provisions in view of compliance with EU rules.<sup>43</sup> Accordingly, Russia

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<sup>34</sup> Energy Charter Treaty, Art.7(10)

<sup>35</sup> KONOPLYANIK, p. 474.

<sup>36</sup> “Third energy package” **European Commission**, 21.05.2019, (<https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation/third-energy-package>), accessed 25.03.2020.

<sup>37</sup> JAMAL, p. 114.

<sup>38</sup> “Transit Protocol”, 10.04.2015, (<https://www.energycharter.org/what-we-do/trade-and-transit/transit-protocol/>)

<sup>39</sup> TurkStream Gas Pipeline Agreement, Art.8

<sup>40</sup> TEKAYAK Deniz, “An Overview of Environmental Impact Assessment in Turkey: Issues and Recommendations”, **Ankara Avrupa Çalışmaları Dergisi**, vol.13, 2, 2014, pages.133-151, p. 136.

<sup>41</sup> Convention on Environmental Impact Assessment in A Transboundary Context, (adopted in 1991) Art.3-5. ([https://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo\\_Convention\\_authentic\\_ENG.pdf](https://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf)), accessed 25.03.2020.

<sup>42</sup> LOTT Alexander, "Marine Environmental Protection and Transboundary Pipeline Projects:A Case Study of the Nord Stream Pipeline", **Merkourios-Utrecht J Int'l & EurL**, vol.27, 73, 2011, pages. 55-67, p. 62.

<sup>43</sup> TEKAYAK, p. 140.

did the EIA for the parts of pipeline located in EEZ and territorial waters of Turkey according to its local laws.

## 2. LEGAL COMPARISON OF TURKEY-RUSSIA IGA WITH THE MODEL IGA

Energy Charter Secretariat prepared the model intergovernmental agreement regarding with cross border pipelines. The first edition was prepared in 2004 and the second one was prepared in 2008.<sup>44</sup> The aim was to assist to prospective parties of pipeline project in their negotiation processes. Within this model agreement, neutral provisions which could be accepted by both parties were chosen so that it was aimed to reduce negotiation time between parties. The model agreement is not legally obligatory, in that, all parties or non-party states wishing to use can incorporate its provisions into their agreements or the model agreement can only be used as a starting point for any negotiation process. Despite of its novelty, different principles of the model agreement have been incorporated into various IGA's.<sup>45</sup> Using of these core principles could help to achieve single and unified legal regime that governs cross border pipelines.

IGA's generally cover main fundamental issues concerning succesful implementation of projects.<sup>46</sup> Accordingly, they include broader terms than HGA's. Generally, they include provisions, inter alia, concerning with general obligations, such as co-operation, land rights, non- interruption of project activities, environmental safety standards, tax treatment and dispute settlement.

When compared to the model agreement, it is seen that while some IGA's merely oblige the states not to object to the construction and operation of the project,<sup>47</sup> the IGA of Turkstream requires the respective states to support the project in line with the model agreement which obliges states to fully support projects.<sup>48</sup>

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<sup>44</sup> Energy Charter Secretariat, **Model Intergovernmental and Host Government Agreements for Cross-Border Pipeline**, Second Edition, ECT, 2008.

<sup>45</sup> LEAL-ARCAS and others, 2015, p. 143.

<sup>46</sup> LEAL-ARCAS and others, 2016, p. 158.

<sup>47</sup> GAYLING Barbara, **Intergovernmental Agreements and Host Government Agreements on Oil and Gas Pipelines -A Comparison**, Energy Charter Secretariat, 2015, p. 39.

<sup>48</sup> TurkStream Gas Pipeline Agreement, Art.6

According to the model agreement, states are required to establish environmental and safety standards for the project<sup>49</sup> and at this issue, it seems that the IGA of Turkstream lack of those explicit standards as it is only referring internationally recognized standards for the project design.<sup>50</sup> Even though providing those environmental standards in host government agreements could also be another way, the IGA of the project should have included those standards for preventing possible conflict regarding these standards.

Non interruption of activities except to some conditions during dispute between parties is one of the most important features of the model agreement.<sup>51</sup> According to it, states have to allow the flow of gas even though there is a dispute apart from some situations. Even though the Turkstream IGA contains a clause in which parties are committed to unrestricted flow of natural gas, it does not give same rights as in the model agreement.<sup>52</sup>

With regards to tax treatment, land rights and dispute settlement matters, the Turkstream IGA has provisions consistent with the model agreement. While tax provisions exempt Russian side from almost any taxes about the project, land and dispute settlement provisions determines very detailed land rights and dispute settlement process.<sup>53</sup>

Concerning to the decommissioning of the Turkstream project, in line with the model IGA, decommissioning obligation is not specified in IGA rather it is specified in EIA. According to the decommissioning provisions of EIA, it will be done by Russian side in line with the local law of that time and Good International Industry Practice (GIIP).<sup>54</sup>

As a result, it is seen that the IGA of Turkstream significantly consistent with the model agreement which could possibly increase the successful implementation of the project. It incorporates lots of provisions from the model agreement and also lays down more provisions concerning with the specific requirements of the project. But at some points, it is clearly seen that

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<sup>49</sup> LEAL-ARCAS, p. 32.

<sup>50</sup> Turkstream Agreement Art. 6(6)

<sup>51</sup> Energy Charter Secretariat, **Model Intergovernmental and Host Government Agreements for Cross-Border Pipeline**, Art.9

<sup>52</sup> Turkstream Agreement Art. 7

<sup>53</sup> Turkstream Agreement Art. 9-12

<sup>54</sup> URS Infrastructure & Environment UK Limited, "South Stream OffshorePipeline – Turkish Sector", **Turkstream Info**, 17.07.2013, ([https://www.south-stream-transport.com/media/documents/pdf/en/2013/07/sstbv\\_non-technicalsummary-scoping-report\\_57\\_en\\_20130717.pdf](https://www.south-stream-transport.com/media/documents/pdf/en/2013/07/sstbv_non-technicalsummary-scoping-report_57_en_20130717.pdf)), accessed 25.03.2020.

the Turkstream IGA does not have clear provisions like the non interruption of activities during dispute, which could bring some problems in the future. Also, not having clear environmental and safety standards for the project could cause some ambiguities after the project has been completed.

### 3. CONCLUSION

Cross border pipeline projects are increasing their significance as natural gas becomes more widely used way to decarbonise the world and LNG transportation cannot still compete economically with pipelines. In parallel to this, Turkey and Russia while they have different aims, have concerted their incentives to implement the Turkstream Project. Strong relationship between these countries beyond this pipeline project has a chance to strengthen the future of this project and the fact that not only being transit but also being importer country could deter Turkey from taking adverse actions which may increase the risks for the project.

From the legal perspective, Turkstream Project with its complex legal framework shows lack of unified legal system in international cross border pipeline legal regime. Therefore, until having international pipeline regime, only instrument which could help to ensure consistency between different pipeline projects is seen as the model intergovernmental agreement of ECT.

At this context, the IGA of Turkstream is seen mostly consistent with model intergovernmental agreement and therefore this consistency could reduce most of the possible problems that may be confronted in the future. However, lack of some of provisions, such as non-interruption during dispute and insufficient environmental and safety standards may bring some challenging situations during the implementation of the project.

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